THE HON'BLE SRI JUSTICE N.V. RAMANA

Writ Petition No. 4407 of 2006

Date: 16.10.2006

Between:

M. Jeevaratnam, S/o George, aged about 60 years, Ex-Driver, Laymalle, Guntur District.

.... PETITIONER

AND

A.P.S.R.T.C., rep. by its Vice-Chairman and Managing Director, Musheerabad, Hyderabad and another.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE N.V. RAMANA

Writ Petition No. 4407 of 2006

Order:

Questioning the action of the respondents-Corporation in not paying the gratuity amount from the date of his initial appointment i.e., 07.12.1968 till his retirement dated 30.11.2003, the petitioner filed the present writ petition.

2. The petitioner was initially appointed as Cleaner in the respondents-Corporation on 07.12.1968. Subsequently, he was appointed as Driver on 02.05.1975 as per Regulation 7-A of the APSRTC Service Regulations. While working as such, he was placed under suspension on 27.06.1984 on certain allegations, and was subsequently reverted to the post of Cleaner by orders dated 09.01.1986. Assailing the said reversion orders, the petitioner raised an industrial dispute in I.D. No. 221 of 1994, and the Labour Court, vide award dated 11.12.2000, passed the following award.

> "In the result, it is held that the action of the Depot Manager, APSRTC, Guntur-I in reverting Sri M.J. Ratnam, Driver, E.35422 to the post of Cleaner through his proceedings dated 09.01.1986 is NOT JUSTIFIED, but treating the period of suspension as Leave Due is JUSTIFIED. The workman is entitled for the post of Driver from the date of this award. But he is not entitled for the difference of wages of the post of driver from the date of reversion till the date of this award. However, the workman is entitled for the notional increments in the scale of driver from the date of reversion to the date of the award for fixation of his pay as a driver as on the date of the award."

3. Pursuant to the said award passed by the Labour Court, the

petitioner was restored to the post of Driver, and on attaining the age of superannuation, he retired from service on 30.11.2003.

4. It is the case of the petitioner that after his retirement, when the respondents-Corporation, in spite of his representation, failed to pay the gratuity amount from the date of his initial appointment till retirement, he filed W.P. No. 22321 of 2004, and this Court, by order dated 03.12.2004, disposed of the said writ petition directing the respondents-Corporation to consider his representation dated 30.06.2004 and pass appropriate orders. The petitioner states that the 2nd respondent-Depot Manager, without considering his representation and without counting his service from 25.06.1984 to 06.09.2001, passed the impugned proceedings dated 25.02.2005, rejecting his claim, which is illegal and arbitrary. Hence, he filed the present writ petition.

5. Learned counsel for the petitioner submits that earlier when the petitioner was reverted from the post of Driver to Cleaner, he approached the Labour Court, and the Labour Court, by award dated 11.12.2000, declared the reversion order passed by the 2nd respondent-Depot Manager as illegal and set aside the same, and that the said award of the Labour Court has attained the finality, and therefore, the petitioner is entitled to gratuity for his entire service. He further submits that when once the Labour Court set aside the order of reversion and ordered that the petitioner is entitled for notional increments in the scale of driver from the date of reversion to the date of the award for fixation of his pay as Driver as on the date of the award, and when the respondents-Corporation allowed all notional annual increments from 25.06.1984 to 06.09.2001 and re-fixed the pay of the petitioner, the respondents-Corporation cannot deny payment of gratuity to the petitioner for the period from 25.06.1984 to 06.09.2001. In support of his contention, he relied on a judgment of this Court reported in

M. Rama Rao v. Asst. Traffic Manager, APSRTC[1].

6. A counter affidavit was filed by the respondents-Corporation.

Reiterating the counter averments, learned Standing Counsel for the respondents-Corporation submitted that the petitioner was initially appointed as Cleaner on 07.12.1968 and he retired from service on 30.11.2003 (total service 34 years 11 months and 23 days), and that the petitioner neither performed any duties nor rendered any services to the Corporation from 27.06.1984 i.e., the date of suspension till the date of restoration for duty at Repalle Depot on 06.09.2001, i.e., for about 17 years 2 months and 9 days, and that the Corporation, after deducting the said ineffective service of 17 years 2 months and 9 days from the total service of 34 years 11 months 23 days, reckoned the active service rendered by the petitioner from the date of his appointment till retirement as 17 years 9 months and 14 days, which is rounded off to 18 years, and the petitioner is entitled to gratuity for the said period only, which comes to Rs.94,614/-. He further submits that the petitioner was already paid an amount of Rs.85,152/- towards 90% of gratuity and the balance amount of Rs.9462/- has to be paid to the petitioner.

7. Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents-Corporation.

8. This is another unfortunate case, wherein the respondents-Corporation failed in their duty to take any appropriate action against the petitioner for his not attending to duties for about 17 years, while he was working as cleaner/driver. A perusal of the record would clearly demonstrates that in his entire service, the petitioner worked for about 17 years 9 months and 14 days only, and his ineffective service is 17 years 2 months and 9 days. The contention of the learned Standing Counsel for the respondents-Corporation is that the petitioner is entitled to gratuity only for the period he worked i.e., for 17 years 9 months and 14 days, and he is not entitled to gratuity for his ineffective service of 17 years 2 months and 9 days. In this regard, it is to be noted that it is the admitted case of the respondents-Corporation that the petitioner remained absent from his duties, without any intimation or sanction of

leave, from 27.06.1984 to 05.09.2001 i.e., for about 17 years. It is also the admitted case of the respondents-Corporation that they have not issued any single memo or initiated any disciplinary proceedings against the petitioner for his not attending to duties, and till today they have not declared the break in service of the petitioner. When the respondents-Corporation failed to initiate any disciplinary proceedings against the petitioner for his unauthorized absence from duties for about 17 years, and when there is no declaration with regard to break in service of the petitioner, the contention of the learned Standing Counsel for the respondents-Corporation that the petitioner is not entitled to gratuity for the period from 27.06.1984 to 05.09.2001 cannot be accepted. Even though the petitioner has not worked for about 17 years, as there was no declaration by the respondents-Corporation to that effect, I am compelled to allow the writ petition and declare that the petitioner is entitled to gratuity for the period for which he has not attended to duties also.

9. Having regard to the facts and circumstances of the case and following the judgment of this Court in ***M. Rama Rao v. Asst. Traffic Manager*** (1 supra), the writ petition is allowed and the respondents-Corporation are directed to pay the gratuity amount to the petitioner for the remaining period of 17 years 2 months and 9 days also (from 27.06.1984 to 05.09.2001). No costs.

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N.V. RAMANA, J.

Date: 16.10.2006
Nsr/Sj

[1] 1998 (3) ALD 76